REMARKS

Upon entry of this amendment, claims 1-8 and 10-68 will be pending in this application and the independent claims of this application will be 1, 24, 41, 53 and 66. Independent claim 1 has been amended to recite recitations of original claim 9. Claims 10-14 have been amended for consistency of the recitation "permeation". Claims 24, 41 and 53 have been editorially amended. Original claim 9 is canceled herein. Support for the amendments may be found in the "Detailed Description of the Invention." New claims 66-68 have been added. No new matter has been added. Entry of these amendments is respectfully requested.

Applicants respectfully request reconsideration of the present application in view of the following remarks.

Rejections under 35 U.S.C. §103(a)

Claims 1-65 stand rejected under 35 U.S.C. §103(a) over US Patent No. 6,395,383 to Maples ("Maples '383") in view of US 4,824,916 to Kershner *et al.* ("Kershner '916"). Applicants respectfully traverse.

Independent claims 1, 24, 41 and 53 recite a laminate having "a permeation to bis-2-chloroethyl sulfide of less than or equal to 100 $\mu g/cm^2$ over a 20 hour period." New independent claim 66 recites "having a permeation to pinacolyl methylphosphono fluoridate of less than or equal to 30 $\mu g/cm^2$ over a 20 hour period."

Applicants acknowledge the Office Action assertion that "... [neither, *sic*] Maples nor Kershner teach the claimed bis-2-chlorethyl sulfide or pinacolyl methylphosphono fluoride permeability over a 20-hour period" (Office Action, p. 6). Thus, Maples '383 in view of Kershner '916 fails to teach all claimed elements of Applicants' claimed invention.

Additionally, Applicants respectfully traverse the Office Action allegation that it is "reasonable to presume that said properties are inherent to their combined product". (Office Action, p. 6). MPEP § 2163.07(a) states the law:

> "To establish inherency, the extrinsic evidence 'must make clear that the missing descriptive matter is necessarily present in the thing described in the reference, ... Inherency, however, may not be established by probabilities or possibilities. The mere fact that a certain thing may result from a given set of circumstances is not

sufficient.' " *In re Robertson*, 169 F.3d 743, 745, 49 USPQ2d 1949, 1950-51 (Fed. Cir. 1999) (citations omitted).

MPEP 2112 places the burden of proof of inherency upon the Examiner:

> "In relying upon the theory of inherency, the examiner must provide a basis in fact and/or technical reasoning to reasonably support the determination that the allegedly inherent characteristic necessarily flows from the teachings of the applied prior art." *Ex parte Levy,* 17 USPQ2d 1461, 1464 (Bd. Pat. App. & Inter. 1990) (emphasis in original) (.... The Board reversed on the basis that the examiner did not provide objective evidence or cogent technical reasoning to support the conclusion of inherency.).

(*emphasis in original*). Accordingly, the allegation "reasonable to presume" is insufficient for a proper rejection based upon a theory of inherency. Applicants respectfully assert that no evidence or "basis in fact and/or technical reasoning" has been provided in the Office Action. *Id.*

Further, Kershner '916 discloses the difficulties which exist in attempting to practice (prepare) the disclosed crosslinked polymer. Kershner '916 reveals the following problems may exist and decisions which are indicated to be required in attempting to practice the disclosed technology, *e.g.*:

- improper salt concentration can cause undesirable swelling (7/47-49);
- improper salt concentration may only crosslink the surface (7/49-50);
- improper temperature (high temperature) can cause crosslinked systems to degrade (7/64-65);
- determination of pH (7/65-67);
- determination of cure time (7/65-67);
- improper diluent or solvent can deleteriously affect the polymer or crosslinker (8/14-16);
- decisions whether or not to use surfactants (8/16-17);
- decisions regarding the use of gas or neat crosslinkers (8/17-18);
- decisions regarding catalyst to induce crosslinking (8/19-20);
- decisions regarding irradiation to induce crosslinking (8/19-20); and
- decisions regarding whether crosslinking will be covalent or ionic (9/1-5).

In disclosing the numerous decisions and problems which may be faced in practicing the Kershner '916 technology, it is evident that undue experimentation would be required in attempting to practice the Kershner '916 compounds. To modify Maples '383 in view of Kershner '916, as suggested in the Office Action, would likely require further decision-making and additional

undue experimentation. Such experimentation, the multiplicity of steps required and problem solving indicated is not a matter of optimization. Such decisions and problems would require modifications not taught in either Maples '383 or Kershner '916.

In view of the difficulties and complex decision making indicated in practicing Kershner '916 independently, or in combination with Maples '383, the Office Action allegations of "general conditions" are respectfully traversed.

Accordingly, there is no expectation of success in practicing Maples '383 in view of Kershner '916 to achieve Applicants' invention as claimed.

In view of the above, Applicants respectfully assert that Maples '383 in view of Kershner '916 fails to teach, or suggest, all claimed elements of Applicants' claimed invention. Further, there is no expectation of success of practicing Applicants' claimed invention from the teachings of Maples '383 in view of Kershner '916. Hence, a *prima facie* case of obviousness under 35 U.S.C. § 103(a) does not exist. Applicants' respectfully request the withdrawal of all rejections under 35 U.S.C. § 103(a).

For Completeness of the Record

As discussed above, Applicants respectfully assert all pending claims are distinguished over Maples '383 in view of Kershner '916. Additionally, Applicants respectfully provide supplemental traverse and comments in response to the Office Action and in support of the patentability of the claims previously pending in order to clarify the record and for protection of Applicants' rights.

Applicants respectfully traverse the characterization of "third open pore substrate" (Office Action, p. 2), as well as "the third layer" (Office Action, p. 4). It is Applicants' understanding that these quoted labels refer to "porous substrate 23" as disclosed in the specification and illustrated in figures 6-21.

Applicants respectfully assert that there is not sufficient motivation in either Maples '383 or Kershner '916 to combine the references in an attempt to achieve a "waterproof" article (Office Action, p. 4). Additionally, Applicants do not recite "waterproof" in any independent claim and no specific claims are referenced under this basis of rejection.

Further, there is no evidence of any likelihood of success that Applicants' invention as claimed could be achieved from Maples '383 in view of Kershner '916.

Applicants also respectfully traverse the Office Action allegation in which a sulfonated aromatic polymer would "reside partially within the substrate" (Office Action, p. 5). Evidence is not cited in the Office Action in support of this allegation.

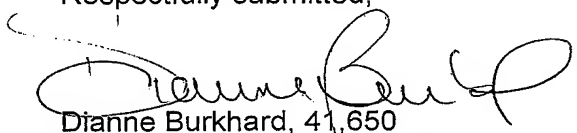
Provisional Obviousness-type Double Patenting Rejection

The Office Action maintains the provisional obviousness-type double patenting rejection of claims 1-65 over claims 1-51 of copending Application No. 10/818,214. In accordance with the Response filed March 13, 2006, Applicants will consider filing a terminal disclaimer after successful prosecution of both applications.

Conclusion

For the foregoing reasons, the present invention as defined by the pending claims is neither taught nor suggested by any of the references of record whether considered alone, or in combination. Accordingly, Applicants respectfully submit all claims are now in form for allowance. If further questions remain, Applicants request that the Examiner telephone Applicants' undersigned representative before issuing a further Office Action.

Respectfully submitted,



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Date: November 16, 2006